

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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NASHROLLAH GASHTILI, an individual,  
and INTEGRATED DYNAMICS  
SOLUTIONS, INC., a California  
Corporation,

Plaintiffs,

v.

JB CARTER PROPERTIES II, LLC, a  
Nevada limited liability company, et al.,

Defendants.

Case No. 2:12-cv-00815-MMD-PAL

[Consolidated with Case. No. 2:12-cv-  
10156-MMD-PAL]

ORDER

(Defs.' Motion to Dismiss or in the  
Alternative Motion for More Definite  
Statement – dkt. no. 9)

(Defendant Fastran, LLC's Motion for a  
Preliminary Injunction and Permanent  
Injunction – dkt. no. 3 in case no. 2:12-cv-  
01156)

Before the Court is Defendants JB Carter Properties II, LLC (JB"), Bartus Carter, and Fastran, LLC's Motion to Dismiss or in the Alternative Motion for More Definite Statement (dkt. no. 9).

On November 9, 2012, the parties consolidated this case with 2:12-cv-01156-MMD-VCF, *Fastran LLC v. Gashtili*. (Dkt. no. 21.) The two cases involve many of the same parties,<sup>1</sup> but LLC is the Plaintiff in the later filed action. Because the cases have

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<sup>1</sup>JB and Carter are not parties to the second suit; Fastran, Inc. is only a party to the second suit. As explained below, all Plaintiffs in the first suit (2:12-cv-00815) are related to all Defendants in the second suit (2:12-cv-01156), and all Defendants in the first filed suit are related to Fastran, LLC, the Plaintiff in the second suit.

1 been consolidated, and to avoid confusion, the Court refers to LLC as a Defendant. LLC  
2 has filed a Motion for a Preliminary Injunction and Permanent Injunction (case no. 2:12-  
3 cv-01156, dkt. no. 3).

#### 4 **I. BACKGROUND**

##### 5 **A. Development of Cash Access Software Program**

6 Nashrollah Gashtili owns Integrated Dynamics Solutions, Inc. ("IDS"), a computer  
7 application systems company. (Dkt. no. 1 at 2.) In 2006, Gashtili was approached by  
8 third parties and their representatives about creating a casino cash access software  
9 program. In turn, the third parties would market the product and sell it to casinos.  
10 Plaintiffs assert that as a result of the third party representations, Gashtili and the third  
11 parties formed Fastran, Inc. ("INC."), a Delaware corporation.

12 Gashtili authored the casino cash access software program. According to  
13 Plaintiffs, Gashtili and IDS then entered into an agreement with INC. whereby IDS and  
14 Gashtili would receive payment for licensing and customizing the software.

15 After this point, Plaintiffs represent that INC. acquired many distributors and its  
16 cash access systems were introduced into the casino industry. The casinos shared  
17 revenue with the distributor and INC. based on a revenue-sharing agreement.

##### 18 **B. Defendants' Initial Involvement**

19 In July 2007, INC.'s representatives approached Mr. Carter, Defendant JB's  
20 principal. They told Carter that INC. was looking for investors to purchase 40% of the  
21 corporation for approximately \$1.25 million. (Dkt. no. 1 at ¶ 9.) During negotiations  
22 about JB's investment in INC. the parties discussed several different proposals.  
23 Eventually the parties agreed that they would jointly form a new business entity, Fastran  
24 LLC ("LLC"), along with JB and two men named Larry Brown and John Bryant.<sup>2</sup> JB  
25 would invest in LLC rather than INC. JB was appointed the initial managing member of  
26 LLC.

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28 <sup>2</sup>Bryant subsequently sold his interest in LLC *pari passou* to the other members of the company.

1 On or about November 29, 2009, INC. sold all of its assets to LLC. As part of this  
2 sale, Defendants allege that INC. transferred ownership of the copyrighted software to  
3 LLC.

4 **C. State Court Litigation and Copyright Registration**

5 The parties provide competing allegations that after the transfer of assets, either  
6 JB (and/or Carter) or Gashtili (and/or IDS) wrongfully retained and used the copyrighted  
7 software.

8 Defendants assert that Gashtili and IDS retained control over the copyrighted  
9 software, despite LLC's belief that the copyrighted software was one of INC.'s assets  
10 that had been transferred to LLC. Plaintiffs dispute this and maintain that IDS owns the  
11 copyright in the software; INC. and later LLC merely had a non-exclusive license in the  
12 software.

13 Plaintiffs, on the other hand, allege that after LLC was formed, JB and Carter sent  
14 the technical design documents, source code, backend application, and reporting tools  
15 for the software overseas and had programmers in India generate a replica of the  
16 copyrighted software.<sup>3</sup> Plaintiffs claim that JB and Carter then took several steps to  
17 profit from this replica software. First, JB and Carter siphoned off existing and potential  
18 customers of LLC to JB's own companies, ATM Merchant System ("ATMSS") and Multi  
19 Choice Cash ("MCC"). Plaintiffs represent that because of this, LLC has no remaining  
20 viable customer accounts. ATMSS and MCC then promoted the allegedly infringing  
21 replica software to LLC's former clients as a new, legitimate competitor to LLC's  
22 copyrighted software. Second, JB representatives, in their capacity as the managing  
23 members of LLC, used opportunities to negotiate with casinos and clearing houses on  
24 behalf of LLC to establish favorable deals for JB's other companies.

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27 <sup>3</sup>IDS claims the source code and design documents for the software was and  
28 continues to be a closely guarded trade secret. The creation of the replica software  
forms the basis for IDS' trade secret misappropriation claim.

1 The parties also provide conflicting allegations of wrongdoing in connection with  
2 INC.'s bank account. Plaintiffs assert that Carter's brother-in-law, who had access to  
3 INC.'s bank accounts for the limited purpose of processing certain cash access software  
4 transactions, transferred \$150,000 from INC.'s bank accounts to JB's accounts in or  
5 around September 2008. Plaintiffs allege that Carter's brother-in-law did this at JB and  
6 Carter's direction although Defendants had no authority to order the transaction. For  
7 their part, Defendants maintain that Gashtili wrongfully transferred monies from INC.'s  
8 account into his personal bank account and also wrongfully paid LLC's bills using funds  
9 in INC.'s account. Defendants maintain that these transfers violated the parties'  
10 contractual agreement.

11 On December 22, 2009, Defendant JB filed a derivative lawsuit on behalf of LLC  
12 against Gashtili alleging claims for conversion, breach of contract, and related claims in  
13 connection with JB's allegation that Gashtili's withdrawing funds from the INC. bank  
14 account violated the terms of LLC's operating agreement.

15 **D. The Present Consolidated Action**

16 Shortly after JB filed the complaint in state court, on or about January 26, 2010,  
17 IDS applied for a copyright registration certificate in the software. In the application, the  
18 software's date of creation is listed as 2006 and its date of publication is listed as  
19 January 15, 2007. IDS owns copyright Registration Number TX 7-051-036. The  
20 copyright is in the "IDS Cash Access System," a computer software program.

21 Plaintiffs contend that Defendants threatened to sue Plaintiffs in federal court,  
22 claiming LLC owns the copyright in the software and that Gashtili and IDS' use therefore  
23 constitutes copyright infringement. However, IDS and Gashtili continued to use the  
24 software and, as mentioned, obtained copyright registration of the software in IDS'  
25 name.

26 In response, Plaintiffs filed suit, requesting declaratory relief under 18 U.S.C. §  
27 2201 and Fed. R. Civ. P. 57. Plaintiffs ask the Court to declare that Plaintiff IDS is the  
28 owner of the copyrighted software at issue, and that its use of the software is non-

1 infringing. The Complaint also alleges misappropriation of trade secrets, breach of  
2 contract, breach of the implied covenant of good faith and fair dealing, conversion, fraud  
3 in inducement, and breach of fiduciary duty.

4 Defendants later filed suit in federal court, requesting that the Court declare LLC  
5 the owner of the copyrighted software at issue and determine that Plaintiffs are infringing  
6 upon LLC's copyright.<sup>4</sup> (Case no. 2:12-cv-01156-MMD-VCF, dkt. no. 1 at ¶¶ 48-52.)

## 7 **II. MOTION TO DISMISS**

8 Defendants' Motion to Dismiss argues that Plaintiffs' suit should be dismissed for  
9 several reasons: (1) the Court should dismiss the state law claims alleged in Plaintiffs'  
10 Complaint; (2) Plaintiff Gashtili should be dismissed under Fed. R. Civ. P. 12(b)(1)  
11 because he lacks standing; (3) this case should be dismissed under Fed. R. Civ. P.  
12 12(b)(7) for Plaintiffs' failure to join a necessary party, INC.; (4) Plaintiffs must be  
13 compelled to amend the Complaint to join INC. as a necessary party pursuant to Fed. R.  
14 Civ. P. 19; and (5) Plaintiffs must amend their Complaint under Fed. R. Civ. P. 12(e) to  
15 provide the Court and the parties with a more definite pleading.

### 16 **A. 12(b)(6) Motion to Dismiss State Law Claims**

17 Defendants assert that the Court should decline to exercise supplemental  
18 jurisdiction over the state law claims in the Complaint under 28 U.S.C. § 1367(c)  
19 because these claims have already been remanded to state court and remain pending  
20 there. In fact, Gashtili removed the 2009 case filed by JB to this Court, but the case was  
21 subsequently remanded. After reviewing the counterclaims alleged by Gashtili in the  
22 state court case, the Court agrees with Defendants that all of the state court claims  
23 alleged in Plaintiffs' Complaint (dkt. no. 1) are nearly identical to those alleged in the  
24 state court countercomplaint:

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27 <sup>4</sup>Plaintiffs initially argued that LLC's decision to file this second complaint is  
28 procedurally improper because the allegations constitute compulsory counterclaims  
under Fed. R. Civ. P. 13. However, at oral argument regarding these Motions, Plaintiffs  
informed the Court that this argument is mooted given the stipulation to consolidate.

- 1           • The misappropriation of trade secrets allegations in both  
2           complaints claim that JB and Carter were entrusted with valuable  
3           trade secrets in the form of confidential information and that JB  
4           and Carter wrongfully disclosed those trade secrets (*compare*  
5           dkt. no. 1 at ¶¶ 49-56 *with* dkt. no. 31-2 at ¶¶ 35-42);
- 6           • The breach of contract allegations in the complaints allege that  
7           JB and Carter were required to loan monies to the LLC when  
8           needed but failed to do so (*compare* dkt. no. 1 at ¶¶ 57-63 *with*  
9           dkt. no. 31-2 at ¶¶ 43-49);
- 10          • The breach of the implied covenant of good faith and fair dealing  
11          claims in both complaints allege that through their actions,  
12          omissions and false representations, Carter and JB violated the  
13          implied covenant of good faith and fair dealing inherent in the  
14          contract between JB, Carter, and Gashtili regarding the LLC's  
15          formation (*compare* dkt. no. 1 at ¶¶ 64-68 *with* dkt. no. 31-2 at ¶¶  
16          50-54);
- 17          • The conversion allegations in both complaints allege that Carter  
18          and JB wrongfully exerted dominion over the software and  
19          design documents belonging to either Gashtili (in the state court  
20          complaint) or IDS (in the federal court complaint) (*compare* dkt.  
21          no. 1 at ¶¶ 69-73 *with* dkt. no. 31-2 at ¶¶ 55-59);
- 22          • The fraud in the inducement allegations in both complaints  
23          assert that Carter and JB made false representations regarding  
24          the formation of the contract establishing the LLC (*compare* dkt.  
25          no. 1 at ¶¶ 74-85 *with* dkt. no. 31-2 at ¶¶ 60-71);
- 26          • The breach of fiduciary duty allegations in both complaints  
27          involve Carter and JB's breach of the duty they owed Gashtili as  
28          co-members in the LLC (*compare* dkt. no. 1 at ¶¶ 86-90 *with* dkt.  
no. 31-2 at ¶¶ 72-76).

29           To avoid the risk of inconsistent judgment on these substantially similar claims,  
30           the Court declines to exercise jurisdiction under 28 U.S.C. § 1367(c). Further, at the  
31           December 4, 2012 hearing, the parties informed the Court that the state court litigation is  
32           scheduled for trial in January 2013. Accordingly, there is a high potential risk that the  
33           principles of res judicata would preclude the Court from hearing the state law claims  
34           asserted in Plaintiffs' Complaint. See *Allen v. McCurry*, 449 U.S. 90, 94 (1980) ("Under  
35           res judicata, a final judgment on the merits of an action precludes the parties or their  
36           privies from relitigating issues that were or could have been raised in that action.")

37           The Court therefore grants Defendants' Motion to Dismiss as it relates to  
38           Plaintiffs' state law claims.

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**B. 12(b)(1) Motion to Dismiss Plaintiff Gashtili**

Defendants assert that Gashtili lacks standing to sue because he is not the alleged or actual owner of the copyrighted software.

The standing doctrine under the U.S. Constitution requires that those seeking to invoke federal jurisdiction “must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To satisfy Article III, the plaintiff must show that “(1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Friends of the Earth v. Laidlaw Env. Servs., Inc.*, 528 U.S. 167, 180-81 (2000).

The “shareholder standing rule” provides “a longstanding equitable restriction that generally prohibits shareholders from initiating actions to enforce the rights of the corporation unless the corporation’s management has refused to pursue the same action for reasons other than good-faith business judgment.” *Zurich Am. Ins. Co. v. Nat’l Fire & Marine Ins. Co.*, No. 2:12-CV-00264, 2012 WL 2934756, at \*2 (E.D. Cal. July 18, 2012) (citing *Franchise Tax Bd. of California v. Alcan Aluminum Ltd.*, 493 U.S. 331, 336 (1990); *Shell Petroleum, N.V. v. Graves*, 709 F.2d 593, 595 (9th Cir. 1983) (“To have standing to maintain an action, a shareholder must assert more than personal economic injury resulting from a wrong to the corporation. A shareholder must be injured directly and independently of the corporation.”)). Gashtili has not demonstrated that IDS’ management has already refused to pursue this action. Quite the contrary, IDS is pursuing the same claim for infringement here. Nor does Gashtili claim to own the

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1 copyrighted software independently of IDS. The Court accordingly grants Defendants'  
2 Motion to Dismiss Plaintiff Gashtili.<sup>5</sup>

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4 **C. 12(b)(7) Motion to Dismiss for Failure to Join INC. and Motion to  
Compel Plaintiffs to Amend the Complaint to add INC. as a Party**

5 In their Motion, Defendants argue that Plaintiffs failed to join a necessary party,  
6 INC., and that the Complaint should be dismissed. However, INC. is a named  
7 Defendant in the later, now-consolidated case. Because of this, at the December 4,  
8 2012, hearing regarding pending motions in this case, the parties agreed that this Motion  
9 is moot.

10 Defendants alternatively argued that Plaintiffs should be compelled to amend the  
11 Complaint to add INC. as a party pursuant to Fed. R. Civ. P. 19. However, as INC. is a  
12 named Defendant in the later, now-consolidated case, at the December 4, 2012, hearing  
13 the parties agreed that this Motion is also moot.

14 **D. Motion for a More Definite Statement**

15 Defendants assert that Plaintiffs failed to plead fraud with particularity as required  
16 under Fed. R. Civ. P. 9(b), and must be compelled to amend the Complaint to cure this  
17 defect. However, because the state law fraud in the inducement claim is dismissed in  
18 this order, this Motion is denied as moot.

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20 **III. MOTION FOR A PRELIMINARY INJUNCTION AND A PERMANENT  
INJUNCTION**

21 Defendant LLC seeks a preliminary injunction on the basis of its copyright  
22 infringement claims.

23 To qualify for a preliminary injunction, LLC must demonstrate: (1) a likelihood of  
24 success on the merits; (2) a likelihood of irreparable harm; (3) that the balance of

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26 <sup>5</sup>Notably, while Gashtili may have had standing to bring some of the state law  
27 claims involving the contractual disputes between JB, Carter, and himself in his  
28 individual capacity, those claims have been dismissed. The Order only addresses  
Gashtili's standing in regards to the copyright infringement claim and the declaration of  
copyright ownership and non-infringement.



1 hardships favors LLC; and (4) that the injunction is in the public interest. *Winter v. Nat.*  
 2 *Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

3 **A. Likelihood of Success on the Merits**

4 To succeed on a copyright infringement claim, LLC must establish that (1) it owns  
 5 the copyright at issue; and (2) its work has been copied by IDS. See *Swirsky v. Carey*,  
 6 376 F.3d 841, 844 (9th Cir. 2004); *Sid & Marty Krofft Television Prods., Inc. v.*  
 7 *McDonald's Corp.*, 562 F.2d 1157, 1162 (9th Cir. 1977); see also 17 U.S.C. § 106.<sup>6</sup> IDS  
 8 argues that LLC cannot demonstrate a likelihood of success because LLC is not the  
 9 owners of a valid copyright. IDS does not challenge the second element of the copyright  
 10 infringement claim, and thus concedes for the purposes of this Motion that the works  
 11 have been copied.

12 Ownership of the copyrighted software is the central issue in this case.  
 13 Defendants assert that INC. was the author and owner of the copyrighted software and  
 14 subsequently transferred to LLC all ownership interest it had in the copyrighted software.  
 15 IDS, however, claims that it is the sole owner of the copyrighted software. IDS asserts  
 16 that it has never sold, transferred, or conveyed its ownership of the copyrighted software,  
 17 and that LLC at best holds a limited, revocable, non-exclusive, non-transferable license  
 18 for the software's use.

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 22 <sup>6</sup>17 U.S.C. § 106 provides: "the owner of copyright under this title has exclusive  
 23 rights to do and to authorize any of the following: (1) to reproduce the copyrighted work  
 24 in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted  
 25 work; (3) to distribute copies or phonorecords of the copyrighted work to the public by  
 26 sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of  
 27 literary, musical, or dramatic, and choreographic works, pantomimes, and motion  
 28 pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the  
 case of literary, musical, or dramatic, and choreographic works, pantomimes, and  
 pictorial, graphic, or sculptural works, including the individual images of a motion picture  
 or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of  
 sound recordings, to perform the copyrighted work publicly by means of a digital audio  
 transmission."

1 The parties agree that IDS has registered the copyright at issue, and IDS  
2 attached a Copyright Certificate of Registration (case no. 12-1156, dkt. no. 12-1) to its  
3 Opposition to the Motion for Preliminary Injunction.

4 A copyright certificate establishes prima facie evidence of the validity of a  
5 copyright and of the facts in the certificate. 17 U.S.C. § 410(c). Copyright registration  
6 thus creates a presumption that the owner listed on the registration document in fact  
7 owns the copyrighted item. See *Dream Games of Arizona, Inc. v. PC Onsite*, 561 F.3d  
8 983, 987 (9th Cir. 2009) (“A certificate of registration raises the presumption of copyright  
9 validity and ownership.”); *Micro Star v. Formgen Inc.*, 154 F.3d 1107, 1109-1110 (9th Cir.  
10 1998). The presumption is rebuttable. See *Entm’t Research Group, Inc. v. Genesis*  
11 *Creative Group, Inc.*, 122 F.3d 1211, 1217 (9th Cir. 1997). To rebut the presumption,  
12 LLC must offer some evidence to dispute or deny the IDS’ prima facie case. See, e.g.,  
13 *North Coast*, 972 F.2d at 1033; *Folio Impressions, Inc. v. Byer Cal.*, 937 F.2d 759, 763  
14 (2d Cir. 1991).

15 LLC attempts to rebut IDS’ prima facie evidence of ownership by arguing that  
16 Gashtili did not create the work on behalf of IDS. Rather, Gashtili created the software  
17 as a work for hire on behalf of INC., and INC. in turn transferred its ownership to LLC.  
18 Therefore, LLC is the rightful owner of the copyrighted software, and IDS’ use is  
19 infringing. IDS counters that (1) assuming *arguendo* that INC. owned the copyright,  
20 there was never a valid transfer of ownership under the applicable copyright statute; and  
21 (2) should the Court find there was a statutorily-valid transfer, the transfer is nonetheless  
22 illegitimate because IDS and not INC. is the rightful owner of the copyrighted software.

23 IDS is correct that “the law couldn’t be clearer. . . [w]hile the copyright owner can  
24 sell or license his rights [in the copyrighted work] to someone else, section 204 of the  
25 Copyright Act invalidates a purported transfer of ownership unless it is in writing.”  
26 *Effects Associates, Inc. v. Cohen*, 908 F.2d 555, 556 (9th Cir. 1990); see also 17 U.S.C.  
27 § 204(a) (“A transfer of copyright ownership, other than by operation of law, is not valid  
28 unless an instrument of conveyance, or a note or memorandum of the transfer, is in

1 writing and signed by the owner of the rights conveyed or such owner's duly authorized  
2 agent.”). “Copyright law dovetails nicely with common sense by requiring that a transfer  
3 of copyright ownership be in writing. Section 204 ensures that the creator of a work will  
4 not give away his copyright inadvertently and forces a party who wants to use the  
5 copyrighted work to negotiate with the creator to determine precisely what rights are  
6 being transferred and at what price.” *Id.* at 557 (citations omitted).

7 LLC provides evidence that INC. transferred all of its assets to LLC, which it  
8 claims includes the copyrighted software. However, this evidence is in the form of  
9 Gashtili’s deposition testimony, *not* a written transfer of ownership. At the December 4,  
10 2012, hearing, both parties agreed that there is no written, signed document transferring  
11 ownership of the cash access system software from INC. to LLC.<sup>7</sup> Therefore, LLC  
12 cannot claim to own the software by way of transfer. Nor can it assert ownership via the  
13 work for hire doctrine, because LLC asserts that Gashtili or IDS created the software for  
14 INC., not for LLC. (See, e.g., case no. 2:12-cv-01156-MMD-PAL, dkt. no. 3 at 6, 14.)

15 Because LLC cannot demonstrate that there was a written transfer of copyright  
16 ownership from either IDS or INC. to LLC, LLC’s remaining arguments regarding access  
17 and substantial similarity need not be addressed. LLC has not demonstrated that it is  
18 likely to succeed on its copyright infringement claim.

19 **B. Likelihood of Irreparable Harm**

20 To prevail on this Motion, LLC must establish that “remedies available at law,  
21 such as monetary damages, are inadequate to compensate for that injury.” *eBay*, 547  
22 U.S. at 391. That is, LLC must establish that the harm caused by IDS and its affiliates  
23 cannot be remedied except through injunctive relief. See *MGM Studios, Inc. v. Grokster,*  
24 *Ltd.*, 518 F. Supp. 2d 1197, 1210 (C.D. Cal. 2007).

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27 <sup>7</sup>Defendants contend that the software was transferred from INC. to LLC via an  
28 asset purchase agreement, although they also conceded that the arrangement was  
rather informal and was not evidenced by any written agreement.

1           LLC asserts that it will suffer loss of market share and damage to its goodwill  
 2           should IDS maintain control of the copyrighted software. Under LLC's version of the  
 3           facts, IDS' continued control of LLC's asset would likely result in such a harm to LLC.  
 4           This factor therefore weighs in LLC's favor.

### 5           **C. Balance of the Hardships**

6           "In each case, a court must balance the competing claims of injury and must  
 7           consider the effect on each party of the granting or withholding of the requested relief."  
 8           *Amoco Prod. Co. v. Village of Gambell, Alaska*, 480 U.S. 531, 542 (1987); *see also Int'l*  
 9           *Jensen v. MetroSound U.S.A., Inc.*, 4 F.3d 819, 827 (9th Cir. 1993) ("In evaluating the  
 10          balance of hardships a court must consider the impact granting or denying a motion for a  
 11          preliminary injunction will have on the respective enterprises."). "[A] court must remain  
 12          free to deny a preliminary injunction, whatever be the showing of likelihood of success,  
 13          when equity in the light of all the factors so requires." *Illinois Tool Works, Inc. v. Grip-*  
 14          *Pak, Inc.*, 906 F.2d 679, 683 (Fed. Cir. 1990).

15          Here, the balance of hardships favors neither party. Either LLC infringes upon  
 16          IDS' copyright, and causes harm to IDS' reputation, goodwill, and brand, or IDS infringes  
 17          upon LLC's copyright and causes LLC a similar harm. The parties provide no further  
 18          specifics regarding how the disposition of LLC's Motion would cause them hardship.

### 19          **D. Public Interest**

20          Courts "must consider the public interest as a factor in balancing the hardships  
 21          when the public interest may be affected." *Caribbean Marine Servs. Co. v. Baldridge*,  
 22          844 F.2d 668, 674 (9th Cir. 1988). "The public interest analysis for the issuance of a  
 23          preliminary injunction requires [the court] to consider 'whether there exists some critical  
 24          public interest that would be injured by the grant of preliminary relief.'" *Indep. Living Ctr.*  
 25          *of So. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644, 659 (9th Cir. 2009) (quoting *Hybritech*  
 26          *Inc. v. Abbott Lab.*, 849 F.2d 1446, 1458 (Fed. Cir. 1988)). LLC argues that "public  
 27          policy favors" granting the injunction "to protect [its] copyright ownership." However, the

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1 Court's analysis of the infringement claim demonstrates that LLC is unlikely to establish  
2 copyright ownership. The public interest would not be furthered by issuing an injunction.

3 Because LLC has not demonstrated a likelihood of success on the merits, and the  
4 other preliminary injunction factors do not weigh significantly in its favor, the Court  
5 denies LLC's Motion for a Preliminary and Permanent Injunction.


6 **IV. CONCLUSION**

7 IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss or in the  
8 Alternative Motion for More Definite Statement (dkt. no. 9) is GRANTED IN PART and  
9 DENIED IN PART as follows:

- 10 • The 12(b)(6) Motion to Dismiss State Law Claims is GRANTED.
- 11 • The Motion to Dismiss Nashrollah Gashtili as a Plaintiff is GRANTED;
- 12 • The 12(b)(7) Motion to Dismiss for Failure to Join Fastran, Inc. is DENIED  
13 AS MOOT.
- 14 • The Motion to Compel Plaintiffs to Amend their Complaint is DENIED AS  
15 MOOT.
- 16 • The Motion for More Definite Statement is DENIED AS MOOT.

17 IT IS FURTHER ORDERED that Consolidated Defendant LLC's Motion for  
18 Preliminary and Permanent Injunction (case no. 2:12-cv-01156-MMD-PAL, dkt. no. 3) is  
19 DENIED.

20 DATED THIS 11<sup>th</sup> day of December 2012.

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23 \_\_\_\_\_  
24 MIRANDA M. DU  
25 UNITED STATES DISTRICT JUDGE  
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